Filed 8/13/19 4 Streets Co-op of Rte. 2, Inc. v. Basta, Inc. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

4 STREETS CO-OP OF RTE 2, INC., Plaintiff and Respondent, v. BASTA, INC., Defendant and Appellant.	B284158 (Los Angeles County Super. Ct. No. BC618347)

APPEAL from an order of the Superior Court of Los Angeles County. Gregory Keosian, Judge. Affirmed.

Law Office of Benjamin G. Ramm and Benjamin G. Ramm for Defendant and Appellant.

Adams Stirling PLC, Cang N. Le and Stefan B. Herpel for Plaintiff and Respondent.

After prevailing on a motion pursuant to Code of Civil Procedure section 425.16,[1] California's anti-SLAPP statute,[2] defendant and appellant BASTA, Inc. (BASTA), moved for attorney fees. The trial court granted the motion in part, awarding BASTA a reduced amount of attorney fees. BASTA appeals, arguing that "[b]ecause the trial court misread the evidence and applied the wrong legal standard," the matter must be remanded so that the trial court can recalculate the attorney fee award.

We affirm.

PROCEDURAL BACKGROUND

On April 27, 2016, plaintiff and respondent 4 Streets Co-op of Rte 2, Inc., brought a complaint against BASTA and others, alleging intentional interference with contractual relations, common count (money had and received), breach of contract, ejectment, unjust enrichment, and civil conspiracy.

In response, BASTA filed a demurrer and an anti-SLAPP motion.[3] The demurrer was set for hearing on August 10, 2016,

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] SLAPP is an acronym for strategic lawsuit against public participation. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 813, overruled in part on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 (*Equilon*).)

[3] Two other defendants, Carmen Cabrera (Cabrera) and Maria Delgado (Delgado), also filed anti-SLAPP motions. They

and the hearing on the anti-SLAPP motion was scheduled for September 26, 2016.

On August 29, 2016, after taking the matter under submission, the trial court sustained BASTA's demurrer without leave to amend.

On September 13, 2016, plaintiff filed its opposition to BASTA's anti-SLAPP motion. It argued that in light of the trial court's order sustaining BASTA's demurrer without leave to amend, "there is no operative complaint pending against [BASTA] to strike and hence the anti-SLAPP Motion should be taken off calendar as moot." (Bolding omitted.)

On November 22, 2016, the trial court granted BASTA's anti-SLAPP motion.[4] Relying upon *White v. Lieberman* (2002) 103 Cal.App.4th 210 and *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446, the trial court found that BASTA's anti-SLAPP motion was not moot. Turning to the merits, the trial stated: "[Plaintiff] failed to substantively oppose this motion. Additionally, the court notes that it has already sustained a demurrer without leave to amend as to the claims in this action[] . . . . Accordingly, [plaintiff] has failed to meet its burden to establish that it has a probability of success on the merits." Thus, the trial court granted BASTA's anti-SLAPP motion, expressly finding that defendant could bring a motion for attorney fees.

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were represented by the same attorney who represented and continues to represent, BASTA.

[4] On January 3, 2017, the trial court granted Cabrera and Delgado's anti-SLAPP motion.

BASTA, Cabrera, and Delgado thereafter filed a joint motion for attorney fees "because they prevailed on similar anti-SLAPP motions." They requested $101,193.75. Broken down, BASTA requested $68,625 (122 hours of work at $450 per hour, with a multiplier of 1.25), plus $8,572.50 to be awarded to BASTA, Cabrera, and Delgado jointly ("38.1 hours for working on tasks generally related to the defense, including the anti-SLAPP motion at $450 per hour with a multiplier of 0.5") and $15,615 to be awarded to BASTA, Cabrera, and Delgado jointly ("34.7 hours of work on tasks related to the motion for fees at a rate of $450 per hour with no multiplier").

Plaintiff opposed the motion for attorney fees. In so doing, plaintiff noted that many of the billing hours were not recoverable. In fact, the fees requested were hopelessly inflated and unreasonable. Thus, not only should the lodestar be reduced, but no enhancement should be awarded. Finally, plaintiff offered evidence that a reasonable hourly rate is $350.

After the trial court entertained oral argument and took the matter under submission, it issued an order granting the motion for attorney fees in part. It awarded BASTA, Cabrera, and Delgado a total amount of $20,260, "representing 38.1 hours preparing [BASTA's] anti-SLAPP at $200 per hour (.5 multiplier), 14.9 hours relating to the individual defendants['] anti-SLAPP at $400 per hour, and 16.7 hours relating to this motion for fees, at $400 per hour." In so ruling, the trial court found that the fees requested for "the 122 hours 'for work defendant BASTA' [were] not compensable. However, the 38.1 hours for working relating to the BASTA anti-SLAPP, the 14.9 hours relating to the individual defendants' anti-SLAPP, and the 34.7 hours relating to the attorneys' fee motion are[] generally compensable."

Further, the trial court agreed with plaintiff that the fee request for 34.7 hours of work spent preparing the motion for attorney fees was "unreasonable and inflated." Thus, the moving parties were only entitled to fees for 16.7 hours of work preparing the motion for attorney fees.

Moreover, the trial court found the attorney's requested hourly rate of $450 "unsupported." Therefore, it granted a fee rate of $400 per hour.

Finally, the trial court granted a 0.5 multiplier as to the 38.1 hours requested (for preparing BASTA's anti-SLAPP motion).

BASTA, Cabrera, and Delgado moved for a new trial, arguing that there was insufficient evidence for the trial court to reduce the amount of attorney fees. The trial court denied the motion. Again, the trial court rejected BASTA's contention that it was entitled to compensation for "'work defending BASTA,'" finding that such fees were not compensable under the anti-SLAPP statute. Thus, BASTA was only entitled to attorney fees "for the amount of work *claimed by [BASTA]* to have been related to the anti-SLAPP motion. That [BASTA] failed to provide this court with a succinct list of tasks related to the anti-SLAPP motion does not mean this court's order was not based on sufficient evidence."

BASTA's timely appeal ensued. Because no court reporter was present at the April 27, 2017, hearing, BASTA filed a motion for settled statement. BASTA proposed a condensed version of the oral proceedings, which included the trial court's comment, following oral argument, that it would "check the figures and issue a ruling." BASTA's motion to proceed with settled statement was granted.

DISCUSSION

I. S*tandard of review and applicable law*

"Section 425.16, subdivision (c), provides that 'a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.' It is well established that '[t]he amount of an attorney fee award under the anti-SLAPP statute is computed by the trial court in accordance with the familiar "lodestar" method. [Citation.] Under that method, the court "tabulates the attorney fee touchstone, or lodestar, by multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work. [Citations.]"' [Citation.]

"'[A]s the parties seeking fees and costs, defendants "bear[] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." [Citation.] To that end, the court may require defendants to produce records sufficient to provide ""a proper basis for determining how much time was spent on particular claims."" [Citation.] Importantly, when considering a fee award, the trial court is not required to award the amount sought by the successful moving parties, but instead 'is obligated to award "reasonable attorney fees under section 425.16 [that] adequately compensate[] them for the expense of responding to a baseless lawsuit."' [Citation.]

"A prevailing defendant on an anti-SLAPP motion is entitled to seek fees and costs "'incurred in connection with'" the anti-SLAPP motion itself, but is not entitled to an award of attorney fees and costs incurred for the *entire* action. [Citations.] An award of attorney fees to a prevailing defendant on an anti-SLAPP motion properly includes attorney fees incurred to litigate

the special motion to strike . . . . However, a fee award under the anti-SLAPP statute may not include matters unrelated to the anti-SLAPP motion, such as 'attacking service of process, preparing and revising an answer to the complaint, [or] summary judgment research.' [Citation.] Similarly, the fee award should not include fees for 'obtaining the docket at the inception of the case' or 'attending the trial court's mandatory case management conference' because such fees 'would have been incurred whether or not [the defendant] filed the motion to strike.' [Citation.] In short, the award of fees is designed to "'reimburse[e] the prevailing defendant for expenses incurred in *extracting* herself from a baseless lawsuit'" [citation] rather than to reimburse the defendant for all expenses incurred *in* the baseless lawsuit." (*569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 432–433, fn. omitted (*Backcountry*).)

"Although a SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees, he or she is entitled "'only to reasonable attorney fees, and not necessarily to the entire amount requested. [Citations.]" [Citation.] We review the trial court's ruling for abuse of discretion.' [Citation.] Applying this standard, we may not disturb the court's fee determination ""unless the appellate court is convinced that it is clearly wrong."" [Citations.] . . . Where, as here, a trial court severely curtails the number of compensable hours in a fee award, the operative impact of that presumption can include a presumption the trial court concluded the fee request was inflated. [Citation.]" (*Backcountry*, *supra*, 6 Cal.App.5th at pp. 433–434, fns. omitted.)

"The appellant challenging the award 'bear[s] the burden of affirmatively establishing that the trial court abused its discretion.' [Citation.] As with most trial court orders, we "'presume the trial court's attorney fees award is correct.'" [Citation.]" (*In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 954.)

II. *The trial court did not err*

BASTA raises three arguments on appeal. First, BASTA asserts that the trial court erred in compensating it for 38.1 hours "working on tasks generally related to the defense, including the anti-SLAPP motion" while declining to compensate it for 122 hours of "work defending BASTA." According to BASTA, the supporting documentation confirms that, by doing so, the trial court awarded BASTA attorney fees for work unrelated to the anti-SLAPP motion while also denying it attorney fees for work related to the anti-SLAPP motion. Thus, the matter must be remanded for recalculation.

We disagree. "Here, the record contains sufficient support for the trial court's decision to adjust downward the hour component for the lodestar calculus." (*Backcountry*, *supra*, 6 Cal.App.5th at p. 441.) For reasons that are unexplained, BASTA submitted two categories of hours for which it sought compensation: (1) 122 hours for work defending BASTA, which BASTA contends includes time spent on the anti-SLAPP motion; and (2) 38.1 hours for work spent on tasks generally related to the defense, including the anti-SLAPP motion. Following oral argument, the trial court "check[ed] the figures" and determined that BASTA was only entitled to recoup attorney fees for 38.1 hours of work relating to its anti-SLAPP motion. The significant reduction in the amount of compensable hours gives rise to a

presumption that the trial court found the fee request was inflated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1323 ["When the trial court substantially reduces a fee or cost request, we infer the court has determined the request was inflated"].) And, the trial court reached this determination after reviewing the parties' moving papers and the supporting evidence, and relying upon its own knowledge of this case and other comparable cases. Under these circumstances, BASTA failed to demonstrate that the trial court abused its discretion.

In urging us to reverse, BASTA argues that the anti-SLAPP statute must be construed broadly, including the subdivision relating to the mandatory fee award. BASTA is mistaken. Aside from the fact that BASTA offers no legal authority in support of its novel proposition, case law is well-established that a prevailing defendant on an anti-SLAPP motion is only entitled to attorney fees relating to the anti-SLAPP motion, not to the defense in general. (See, e.g., *Backcountry*, *supra*, 6 Cal.App.5th at p. 433.)

Second, BASTA asserts that the trial court erred in declining to use a multiplier of 1.25. It is well-settled that a "trial court is not *required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) "[T]he trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment." (*Ibid.*) And, "a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that

would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party." (*Id*. at p. 1139.)

Here, the trial court's decision to use a 0.5 multiplier (as opposed to a 1.25 multiplier) was within the bounds of reason. As the trial court expressly noted, BASTA requested attorney fees for work that did not warrant a multiplier, and we presume the trial court determined that the fee request was inflated. (*Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at p. 1323.)

Third, BASTA asserts that the trial court erred in setting counsel's hourly rate at $400 per hour, reduced from the requested rate of $450 per hour.

"The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom [citation], and this includes the determination of the hourly rate that will be used in the lodestar calculus. [Citation.] In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees [citation], the difficulty or complexity of the litigation to which that skill was applied [citations], and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases. [Citation.]" (*Backcountry*, *supra*, 6 Cal.App.5th at p. 437.)

With these principles in mind, we conclude that the trial court did not abuse its discretion in setting BASTA's attorney's hourly rate at $400. While the trial court did not give an explanation for the particular rate it selected, it did expressly note that BASTA's attorney had declared that he had been awarded rates of $395 per hour in unlawful detainer actions and $415 per hour in class actions. And the trial court was also presented from evidence that plaintiff's counsel charged only $350 per hour. Given that the rate selected by the trial court—$400 per hour—falls squarely in the middle of BASTA's counsel's admitted hourly rates, and is still more than what plaintiff's counsel charged. we see no abuse of discretion.

DISPOSITION

The trial court's order is affirmed. Plaintiff is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ